

PDC Interpretation

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STATUS:	Effective January 28, 2003	SUPERSEDES:	New
REFERENCES:	RCW 42.17.240 RCW 42.17.241 RCW 42.17.370(10) WAC 390-24 WAC 390-28 "F-1" Form (Personal Financial Affairs Statement) PDC Declaratory Order No. 7 PDC Interpretation 91-01 "Personal Financial Affairs Statement – Instruction Manual and Blank Forms"	APPROVED BY:	The Commission

Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Applicants Whose Spouses Create a Reporting Obligation for the Applicant

Background

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter 42.17 RCW. The statutes require certain candidates and public officials to report their financial affairs on a "Personal Financial Affairs Statement" (an "F-1" form). RCW 42.17.240, RCW 42.17.241. The Commission is authorized to allow modifications or suspensions of these reporting requirements under RCW 42.17.370(10) when it finds that "literal application" of the chapter "works a manifestly unreasonable hardship" and that the suspension or modification of the reporting requirements "will not frustrate the purposes of the chapter." The Commission shall suspend or modify the reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof of such claim.

The PDC has adopted rules to further identify reporting modification/suspension procedures. Those rules are in WAC 390-28. The procedures include making the request in writing, and requesting a hearing. The requester is not required to attend the hearing in person and may instead submit a written, sworn statement. The possible qualifications for obtaining a reporting modification with respect to an F-1 Form are identified in WAC 390-28-100.

In addition, due to the volume and similarity of modification or suspension requests concerning F-1 Forms from certain professions, the Commission has also developed a series of “protocols” that interpret the statute and rules with respect to those professions. The protocols enable easier consideration of such requests. Those protocols are being provided in a series of interpretations.

In some instances, a person filing an F-1 is required to report information about entities solely because his or her spouse holds an ownership interest or is an officer or director of the entity. In these instances, the applicant may not have direct knowledge of the information that must be reported, or the ability to obtain the reportable information. For these reasons, a protocol, in the form of an interpretation, is being provided for modifications requested by applicants who incur a reporting obligation because of the activities of his or her spouse.

PDC Interpretation

Applicants who are Incumbents and Whose Spouses are Lawyers or Members of a Law Firm

The following language is to be used when the applicant must report the activities of a lawyer or law firm because of the relationship to the firm by the applicant’s spouse.

This language is to be used when the applicant is an **incumbent** (holds office or the position) and either acts alone or as part of a governing body, board, or commission.

1. The applicant may satisfy the reporting requirements of RCW 42.17.241(1)(g)(ii) by identifying for the appropriate reporting period:

(a) The names of the reportable business clients for whom the applicant’s spouse has done legal work, of which the applicant is aware ¹;

¹ Ordinarily, the identity of a client does not fall within the purview of the information protected by the attorney-client privilege unless there is a “strong probability” that the disclosure would convey the substance of a confidential communication between client and attorney. Splash Design, Inc. v. Lee, 104 Wn.App. 38, 14 P.3d 879 (2001) (describing Rule of Professional Conduct 1.6 and citing to Dietz v. Doe, 131 Wn.2d 835, 935 P.2d 611 (1997)); Tegland, Washington Practice, Vol. 5A, § 501.15 (1999); United

(b) Other reportable business clients of the law firm whose interests are significantly affected by **(name of governing body, board or commission)** or by the applicant's actions in the applicant's official capacity as **(name of office or position held)** whose identities are known to the applicant by any means;

(c) The names of the reportable business clients of the law firm when:
(i) the names are listed in Martindale Hubbell, the firm's publicity brochure(s), or the firm's resume, website, or similar promotional materials of the firm; or,

(ii) the identities are otherwise publicized or referenced in documents open for public inspection at the courts, in administrative hearings, or at other public agencies; or

(iii) the identities have been disclosed in documents made available for public inspection at open public meetings of public agencies; or,

(iv) the identities have been made a matter of public knowledge in other similar public forums, and

(d) All reportable governmental clients that have done business with the law firm.²

2. Where the applicant is aware of the identity of his or her spouse's clients, and where the identity is not otherwise a matter of public record or public knowledge and thus automatically disclosable under 1(c) or 1(d), the responsibility is placed upon the applicant to insure that consent is obtained from the reportable business or corporate clients to enable the reporting of those client identities.

States v. Hunton & Williams, 952 F.Supp. 843 (D.C. 1997)(under federal law, absent special circumstances, identity of a client of a lawyer or law firm is not protected by attorney-client privilege); C.K. Liew v. Breen, 640 F.2d 1046 (9th Cir. 1981) (citing to California law for same proposition, and to J. Wigmore, Evidence § 2313).

² The names of governmental clients are matters of public knowledge in listings in Martindale Hubbell; the firm's publicity brochure(s), websites, or other promotional materials; or the firm's resume. The names of government clients are also matters of public knowledge in records that disclose that the firm is representing the client, including but not limited to documents reflecting payments of public funds from the governmental agency to the law firm; court filings; filings in administrative hearings; and in public records. See definition of public record at RCW 42.17.020(36) and (42).

Applicants who are Candidates (Not an Incumbent officer Holder) and Whose Spouses are Lawyers or Members of a Law Firm

The following language is to be used when the applicant must report the activities of a law firm because of the relationship to the firm by the applicant's spouse.

This language is to be used when the applicant is a candidate (**not an incumbent office holder**) and if elected, will either act alone or as part of a governing body, board or commission.

1. The applicant may satisfy the reporting requirements of RCW 42.17.241(1)(g)(ii) by identifying for the appropriate reporting period:

(a) The names of the reportable business clients for whom the applicant's spouse has done legal work, of which the applicant is aware ³;

(b) Other reportable business clients of the law firm whose interests are significantly affected by the actions of the office of **(the office being sought)** whose identities are known to the applicant by any means;

(c) The names of the reportable business clients of the law firm when:

- (i) the names are listed in Martindale Hubbell, the firm's publicity brochure(s), or the firm's resume, website, or similar promotional materials of the firm; or,
- (ii) the identities are otherwise publicized or referenced in documents open for public inspection at the courts, in administrative hearings, or at other public agencies; or
- (iii) the identities have been disclosed in documents made available for public inspection at open public meetings of public agencies; or,
- (iv) the identities have been made a matter of public knowledge in other similar public forums, and

³ Ordinarily, the identity of a client does not fall within the purview of the information protected by the attorney-client privilege unless there is a "strong probability" that the disclosure would convey the substance of a confidential communication between client and attorney. Splash Design, Inc. v. Lee, 104 Wn.App. 38, 14 P.3d 879 (2001) (describing Rule of Professional Conduct 1.6 and citing to Dietz v. Doe, 131 Wn.2d 835, 935 P.2d 611 (1997)); Tegland, Washington Practice, Vol. 5A, § 501.15 (1999); United States v. Hunton & Williams, 952 F.Supp. 843 (D.C. 1997)(under federal law, absent special circumstances, identity of a client of a lawyer or law firm is not protected by attorney-client privilege); C.K. Liew v. Breen, 640 F.2d 1046 (9th Cir. 1981) (citing to California law for same proposition, and to J. Wigmore, Evidence § 2313).

(d) All reportable governmental clients that have done business with the law firm.⁴

2. Where the applicant is aware of the identity of his or her spouse's clients, and where the identity is not otherwise a matter of public record or public knowledge and thus automatically disclosable under 1(c) or 1(d), the responsibility is placed upon the applicant to insure that consent is obtained from the reportable business or corporate clients to enable the reporting of those client identities.

Applicants Whose Spouses are Motor Vehicle Dealers

The following language is to be included when the applicant is required to report the activities of a vehicle dealership because the applicant's spouse held an office, directorship, general partnership or ownership interest in a motor vehicle dealership.

This language is to be used whether the applicant is a candidate or incumbent, and whether he or she acts alone or as part of a governing body, board or commission.

1. The applicant may satisfy the reporting requirements of RCW 42.17.241(1)(g) by identifying for the appropriate reporting period:
 - (a) All purchases and leases of vehicles, and purchases of parts and services by **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** from **(name of dealership)**; (It is the responsibility of the applicant to obtain this information, either from the motor vehicle dealership or from the entity, agency, board or commission on which the applicant is seeking to serve or serves.)
 - (b) Business customers and governmental entities other than **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** that purchased or leased ten (10) or more vehicles from **(name of dealership)** of which the applicant is aware;

⁴ The names of governmental clients are matters of public knowledge in listings in Martindale Hubbell; the firm's publicity brochure(s), websites, or other promotional materials; or the firm's resume. The names of government clients are also matters of public knowledge in records that disclose that the firm is representing the client, including but not limited to documents reflecting payments of public funds from the governmental agency to the law firm; court filings; filings in administrative hearings; and in public records. See definition of public record at RCW 42.17.020(36) and (42).

- (c) Business customers who paid in excess of \$15,000 for the purchase of parts and/or service from **(name of dealership)** of which the applicant is aware; and
- (d) All governmental entities other than **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** that paid in excess of **(the reportable threshold amount)** for the purchase of parts and/or service from **(name of dealership)** of which the applicant is aware.

Applicants Required to Report for Entities Because Spouses Hold a Position or Ownership Interest in the Entity

The following language is to be included when other protocol language is not appropriate, and when the applicant is required to report the activities of an entity solely because the applicant's spouse held an office, directorship, general partnership or ownership interest in the entity.

This language is to be used whether the applicant is a candidate or incumbent, and whether he or she acts alone or as part of a governing body, board or commission.

1. The applicant shall report all payments made by **(the entity in which the applicant seeks or holds office)** to **(name of entity in which spouse has an interest)**.
2. The applicant shall report the reportable business and other governmental customers of **(name of entity in which spouse has an interest)** of which the applicant is aware.